Oregon

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

May 9, 1996

TO: Land Conservation and Development Commission

FROM: Richard P. Benner, Director

SUBJECT: Agenda Item 1.0, May 30, 1996, LCDC Meeting

Proposed Criteria for Metro South-North Light Rail Project

RECOMMENDED ACTION

The department recommends that the commission:

1. Adopt the proposed criteria and supporting documentation; and

2. Authorize the commission chair or his designee to sign an order which establishes the criteria and provides a brief statement explaining how the criteria reasonably reflect those statewide land use planning goals and local plan policies relevant to Metro's decisions.

OVERVIEW

House Bill 3478, signed into law by Governor Kitzhaber on March 6, 1996, directs the Land Conservation and Development Commission (LCDC) to establish criteria that will be used by Metro to make decisions for the South-North Project. The LCDC's statutory charge is to issue an order establishing the criteria and a brief statement explaining how the criteria reflect statewide land use goals and acknowledged local comprehensive plan policies relevant to Metro's light rail and associated highway decisions.

The purpose of HB 3478 is to authorize a more expedited land use review process than would ordinarily be possible under existing regulations. The legislation expedites the review process in three ways. First, it authorizes the Metro Council to make the land use decisions for all of the affected jurisdictions (cities of Portland, Milwaukie, Gladstone and Oregon City and the counties of Multnomah and Clackamas). Absent this provision, the six affected jurisdictions would be required to make separate land use decisions for the project based on their respective comprehensive plans. In addition to being lengthy, a series of separate review processes could subject the project to multiple appeals. With Metro making a single decision for the region, only one land use action will be subject to appeal.

Second, the legislation expedites the appellate review process. Both an appeal of the criteria adopted by LCDC and an appeal of Metro's findings and decisions based on the criteria are subject to accelerated appeal procedures as outlined in the act.

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Third, the legislation limits the basis of judicial review for both the criteria established by LCDC and the decisions made by Metro.

The Commission adopted land use criteria for Westside Light Rail Transit in 1991 pursuant to SB 573. These South-North criteria are substantially similar to the Westside criteria. Changes appear where the 1995 South-North legislation differs from the 1991 legislation, where local plans required a change, and where geographic features such as the Willamette River varied between the Westside and south-north areas.

PURPOSE OF LCDC CRITERIA

Under the legislation Metro's decision-making authority is limited to those aspects of the siting decision which have not yet been made. For example, Metro's Regional Transportation Plan and the acknowledged comprehensive plans of the affected counties and cities already address the need for light rail and give some direction regarding the route for light rail. Statewide land use goals and local plan policies also conceptually support the project on the grounds that it will provide for a balanced, energy efficient transportation system that will contribute to improved air quality in the region.

The land use decisions remaining to be resolved concern the following:

- The light rail route;
- The light rail stations and park-and-ride lots;
- Vehicle maintenance facilities;
- The highway improvements to be included in the project.

The legislation requires LCDC to adopt criteria that will be used by the Metro Council to make decisions on the portions of the project described above. The criteria represent a synthesis of the statewide land use goals and acknowledged local comprehensive plan policies that are relevant to making those decisions.

When reviewing the proposed criteria, it is important to note that the criteria relate only to the first tier in what can be described as a two-tiered local land use decision-making process. The first tier consists of the Metro Council adopting a preferred alternative for the South/North project based on findings in support of the criteria. At this stage, Metro will be required to identify adverse impacts associated with the project and to identify ways in which such impacts might be mitigated.

The second tier consists of local land use review processes (e.g., design review, conditional use review) required by affected local jurisdictions. Local review will occur after a preferred alternative has been selected by Metro.

Under provisions of the legislation, the project cannot be denied at the local review stage. However, reasonable conditions of approval necessary to mitigate adverse impacts may be imposed. A primary advantage of this approach is that local jurisdictions maintain discretion over numerous final design details of the project. The process also allows the public to participate in the public review process used to determine what types of mitigation measures should be applied.

The National Environmental Policy Act (NEPA) process is referenced in the criteria because the federal NEPA process requires identification of adverse impacts and approval of a mitigation plan as part of the Final Environmental Impact Statement for projects receiving federal funds..

CRITERIA DEVELOPMENT

In early September 1995 Metro staff began working with planning and transportation staff from affected local jurisdictions to identify comprehensive plan goals and policies relevant to the South/North Project. That effort is documented in "Comprehensive Plan Policies Applicable to Selection of Criteria for the South-North MAX Light Rail Project" (hereafter referred to as Comprehensive Plan Polices).

The affected jurisdictions are in agreement that the document identifies all comprehensive plan goals and policies relevant to Metro's decision.

Using the Comprehensive Plan Policies and the statewide planning goals, Metro developed 10 criteria. Metro developed its proposed criteria after consulting with the affected jurisdictions, the Department of Land Conservation and Development (DLCD) staff and the Department of Justice, and after providing opportunity for other interested persons to present testimony.

PROPOSED CRITERIA

DLCD staff is recommending the same criteria as those proposed by Metro. The criteria shown below reflect the intent of statewide goals and local comprehensive plan policies.

1. Coordinate with and provide an opportunity for Clackamas and Multnomah counties, the cities of Gladstone, Milwaukie, Oregon City and Portland, the TriCounty Metropolitan Transportation District of Oregon, and the Oregon Department of Transportation, to submit testimony on the light rail route, light rail stations, park-and-ride lots and vehicle maintenance facilities, and the highway improvements, including their locations.

Rationale: Criteria 1 and 2 (stated below) are procedural rather than substantive. They direct the way in which the project hearing should be conducted. HB 3478 specifically requires the Metro Council to consider testimony provided by Tri-Met, Oregon Department of Transportation, and affected jurisdictions.

Statewide Goal 2, Land Use Planning, calls for city, county, state, federal agency and special district plans and actions related to land use to be consistent. To demonstrate compliance with this goal, government entities and special districts throughout the state are required to develop and implement planning coordination agreements.

As indicated in the Comprehensive Plan Policies, the local comprehensive plan policies also promote intergovernmental coordination and cooperation.

Criterion 1 directs the Metro Council to coordinate with the affected agencies and jurisdictions and to provide an opportunity for those entities to submit testimony on the project facilities. The criterion, however, limits consideration of testimony to those aspects of the project identified in HB 3478.

2. Hold a hearing to provide an opportunity for the public to submit testimony on the light rail route, light rail stations, park-and-ride lots and vehicle maintenance facilities, and the highway improvements, including their locations.

Rationale: As stated above, Criterion 2 is a procedural criterion which directs the Metro Council to facilitate citizen involvement by providing a public hearing on the project. Similar to Criterion 1, it limits consideration of testimony to aspects of the project defined by HB 3478.

Citizen involvement in the land use decision-making process is one of the hallmarks of Oregon's land use program. Statewide Goal 1, Citizen Involvement, and related citizen involvement policies contained in the local comprehensive plans promote opportunities for public participation. The purpose of Criterion 2 is to ensure that the public has an adequate opportunity to present written and/or oral testimony in a public forum.

3. Identify adverse economic, social and traffic impacts on affected residential, commercial and industrial neighborhoods and mixed use centers. Identify measures to reduce those impacts which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by affected local governments during the local permitting process.

A. Provide for a light rail route and light rail stations, park-and-ride lots and vehicle maintenance facilities, including their locations, balancing (1) the need for light rail proximity and service to present or planned residential, employment and recreational areas that are capable of enhancing transit ridership; (2) the likely contribution of light rail proximity and service to the development of a efficient and compact urban form; and (3) the need to protect affected neighborhoods from the identified adverse impacts.

B. Provide for associated highway improvements, including their locations, balancing (1) the need to improve the highway system with (2) the need to protect affected neighborhoods from the identified adverse impacts.

Rationale: Statewide Goal 12 and Rule, Transportation, encourages a safe, convenient and economic transportation system. In designing and constructing transportation improvement, the Goal 12 Transportation Planning Rule (TPR) (OAR 660-12-035(3)(c)) calls for environmental, energy, land use, economic, and energy consequences. The TPR at 660-12-030(3)(b) and (4) also requires consideration of measures to reduce reliance on the automobile and increase the modal share of non-automobile trips. In addition, the Metro Regional Transportation Plan (RTP) encourages adequate levels of mobility with minimum environmental and energy consumptions impacts.

Local comprehensive plan policies are supportive of transit and traffic improvements which promote an efficient, balanced, urban transportation system while minimizing adverse social, economic, and environmental impacts. In other words, the state and local plan policies recognize that transportation needs must be balanced with other urban needs and concerns.

Criterion 3 reflects the balancing concept articulated in Goal 12, the RTP, and related local comprehensive plan policies. It requires Metro to identify adverse economic and social impacts on affected neighborhoods and to balance those impacts with transportation needs. In addition, Metro must consider ways to mitigate adverse impacts through project design.

Criterion 3 also reflects provisions in the TPR, RTP and local plans encouraging mixed use centers and higher density development near light rail lines. It provides for Metro to consider the likely contribution of light rail proximity and service to the development of an efficient and compact urban form as part of its balancing process.

The criterion clearly outlines a two-tiered decision-making process. At the Metro decision-making level, an alignment will be chosen, stations, park-and-ride lot and vehicle maintenance facility locations will be selected, and the highway improvements will be defined. Sections A and B of Criterion 3 require Metro to consider adverse impacts on affected neighborhoods when making these decisions. Specific measure designed to mitigate adverse impacts on affected neighborhoods will be imposed through the NEPA process or by affected local governments during the permitting process

4. Identify adverse noise impacts and identify measures to reduce noise impacts which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by affected local governments during the permitting process.

Rationale: Statewide Goal 6, Air, Water, and Land Resources Quality, calls for maintaining and improving the quality of the state's air, water and land resources. Noise is identified as a component of this goal.

Applicable local comprehensive plan policies encourage consideration of noise impacts when planning and constructing development and transportation projects. Furthermore, they call for measures to minimize excessive noise that adversely affects adjacent land uses.

Under Criterion 4, and consistent with Goal 6, Metro is required to identify adverse noise impacts associated with the project. HB 3478 authorizes the Metro Council only to decide the project facilities. Decisions on appropriate mitigation techniques will occur at later stages of the planning and permitting processes. Consistent with applicable local plan policies, Criterion 4 offers assistance in those processes through identification of impacts and potential mitigation measures.

5. Identify affected landslide areas, areas of severe erosion potential, areas subject to earthquake damage and lands within the 100-year floodplain. Demonstrate that adverse impacts to persons or property can be reduced or mitigated through design or construction techniques which would be imposed during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.

Rationale: Statewide Goal 7, Areas Subject to Natural Disasters and Hazards, and related local comprehensive plan policies were established to protect the public from natural disasters and hazards. The local plan policies require jurisdictions to identify sensitive geologic areas, steep slopes, floodplains, groundwater sources, erosion and deposition, earthquake-sensitive areas, and weak foundation soils, among others. All of the affected jurisdictions have some type of mechanism either to limit development or to control the design of development on lands subject to natural disasters and hazards.

In accordance with state and local policies, Criterion 5 requires Metro to identify adverse impacts to sensitive lands. Measures designed to mitigate for such natural occurrences may be imposed through the NEPA or local land use review processes.

6. Identify adverse impacts on significant fish and wildlife, scenic and open space, riparian, wetland and park and recreational areas, including the Willamette River Greenway, that are protected in acknowledged local comprehensive plans. Where adverse impacts cannot practicably be avoided, encourage the conservation of natural resources by demonstrating that there are measures to reduce or mitigate impacts which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.

Rationale: Statewide Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources, calls for conserving open spaces and protecting natural and scenic resources. The local comprehensive plans contain like policies for these resources. Both the state and local policies recognize that such resources should not be preserved at all costs. Local plans are required to balance the need to preserve significant natural resources with the need to accommodate growth and development within the urban growth boundary. In determining the relative value of urban and natural uses, Goal 5 and several of the related local comprehensive plan policies require that

an economic, social, environmental, and energy (ESEE) analysis be conducted. As a result of that analysis, local jurisdictions have the authority to impose land development controls and/or mitigation measures.

Criterion 6 requires Metro to identify impacts associated with the project that are adverse to Goal 5 resources that are protected in acknowledged comprehensive plans. Where practical, the criterion requires Metro to avoid uses adversely affecting natural or scenic resources. If avoidance is impractical mitigation measures may be imposed through the NEPA and local land use review processes. Metro is required to identify the types of mitigation measures which could be imposed.

Statewide Goal 15, Willamette River Greenway, calls for protecting, conserving, enhancing and maintaining the qualities of lands along the Willamette River Greenway while allowing certain development to occur. The City of Portland's comprehensive plan contains a similar policy. Because the light rail alignment will cross the Greenway somewhere in the City of Portland, Criterion 6 includes a specific reference to the Greenway.

7. Identify adverse impacts associated with stormwater runoff. Demonstrate that there are measures to provide adequate stormwater drainage retention or removal and protect water quality which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.

Rationale: Statewide Goal 6, Air, Water and Land Resources Quality, calls for maintaining and improving water quality. Similarly, applicable plan policies recognize the need to protect water quality, and identify and mitigate for such impacts as stormwater runoff resulting from increases in impervious surfaces. Runoff becomes an issue in regard to highway widening, light rail stations, park-and-ride lots and maintenance facilities.

Criterion 7 requires Metro to identify where the project is expected to increase stormwater runoff and to demonstrate that mitigation measures or natural systems are adequate to handle the runoff. Specific mitigation measures will be imposed during the NEPA or local land use reviews.

8. Identify adverse impact on significant historic and cultural resources protected in acknowledged comprehensive plans. Where adverse impact cannot practicably be avoided, identify local, state or federal review processes that are available to address and to reduce adverse impacts to the affected resources.

Rationale: In addition to protecting natural and scenic resources, Statewide Goal 5 provides for protection of significant historic and cultural resources. Local plans also protect these resources.

Generally, the protection of historic and cultural resources is carried out through ordinances which are applied to development at the permitting stage. At that time, the local government may impose appropriate conditions on the development to minimize adverse impacts or to fully protect the resource. Alternatively, the local government may allow for the alteration, removal or

demolition of the resource in accordance with standards and procedures set out in their local ordinances. Also, the federal NEPA process requires very careful consideration of impacts on historic and cultural resources.

Criterion 8 reasonably reflects Goal 5 and the relevant local plan policies and implementing measures. Metro is required to identify adverse impacts on significant historic and cultural resources protected in acknowledged plans. Such impacts are to be avoided to the extent practicable, and to identify the local, state and federal procedures available to address and reduce adverse impacts on these resources when avoidance is not practicable.

9. Consider a light rail route connecting the Clackamas Town Center area with the City of Milwaukie's downtown. Consider an extension of the light rail route connecting the City of Oregon City and the City of Gladstone with the City of Milwaukie via the Interstate 205 corridor and/or the McLoughlin Boulevard corridor.

Rationale: Criteria 9 and 10 (below) concern Metro's decision only for the location of the light rail route. While these criteria may help implement Statewide Goals 6, 9, 12 and 13 by improving air quality, reinforcing and encouraging economic development, reducing reliance on the automobile, and meeting regional energy conservation objectives, they are intended more particularly to respond to specific policies in applicable plans. Criterion 9 concerns the southern portion of the project, i.e., that portion located in Clackamas County and the cities of Milwaukie, Oregon City and Gladstone.

Criterion 9 is consistent with and reflects Clackamas County plan policies (Transit Policy 11.0), Milwaukie Transportation Plan Map 8, Milwaukie Transportation Element, Objective No. 5, Policies 2, 7 and 8, and Oregon City Transportation Policy 23.

10. Consider a light rail route connecting Portland's central city with the City of Milwaukie's downtown via inner southeast Portland neighborhoods and, in the City of Milwaukie, the McLoughlin Boulevard corridor, and further connecting the central city with north and inner northeast Portland neighborhoods via the Interstate 5/Interstate Avenue corridor.

Rationale: Like Criterion 9, Criterion 10 responds to local policies addressing where the light rail route should be located. Criterion 10 considers the northern portion of the project and is responsive to policies in Portland's and Milwaukie's plans. Specifically, Milwaukie Transportation Element, Objective #5, Policy 2, promotes a light rail route along the McLoughlin Boulevard corridor. This route is also shown on Milwaukie's Transportation Plan Map 8.

For Portland, numerous neighborhood plans promote light rail transit in or near their neighborhoods. Specifically:

- Albina Community Plan, Policy II, Objective 9
- Piedmont Neighborhood Plan, Policy 4, Objective 6
- Kenton Neighborhood Plan, Policy 5, Objective 1
- Boise Neighborhood Plan, Policy VI, Objective 4
- Eliot Neighborhood Plan, Policy C
- Brooklyn Neighborhood Plan, Policy 7A
- University District Plan, Policy 16C
- Central City Plan, Policy 4A
- Transportation Element, North District Policies 3 and 5; Northeast District Policy 8 and Southeast Policy 2.

Criterion 10 reasonably reflects these plan policies.

CONCLUSION:

The affected cities and counties, Oregon Department of Transportation, Tri-Met and Metro have undergone considerable effort to identify the comprehensive and functional plan policies that are relevant to Metro's decision on the South-North Light Rail project facilities, including their locations, and to draft criteria that reasonably reflect those policies and the statewide planning goals. The result is a set of criterion that fulfills the legislative directive to LCDC set out in HB 3478. The purpose of this legislation can be reasonably and expeditiously achieved by application of these criteria.

Furthermore, the proposed criteria are written to avoid vague language that can be subject to different interpretations. And they are written to assist local governments during the permitting process.

ATTACHMENTS:

- Transmittal Letter
- Letter of Support from Local Governments
- Proposed South-North Land Use Criteria
- Narrative in Support of the South-North Criteria Proposed by Metro, the Cities of Gladstone, Milwaukie, Oregon City and Portland, Clackamas and Multnomah Counties, Tri-Met and ODOT
- Comprehensive Plan Policies Applicable to Selection of Criteria for the South-North MAX Light Rail Project

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